

tially dispensed with, or altogether waived so as to make *Chase* the debtor of *Bryden*; and when?

From all the pleadings and proofs it is clear, that the complainant acquiesced in the fact, and acted upon the conviction of his having become legally and properly the debtor of *Bryden* in the sum of \$6000 from the 17th of July 1812, when the papers were tendered to him. He was right in refusing to give his notes at that time, *because of the attachment*. It was not, however, the giving of his notes, which alone could fix him as the debtor of *Bryden*; but the delivery of the papers, or his dispensation with that delivery, either as a condition precedent or altogether. *Chase* did not reject the performance proffered to him by *Bryden*; because it was partial, or at all defective in its nature. On the contrary, he expressly said he had no objections to make to it; and rested his non-compliance, on the pendency of the attachment; and nothing more. From the position he then assumed, it manifestly appears, that he waived the delivery of the papers as a condition precedent; and relied upon his contract alone, considering it as an independent agreement, by means of which he might obtain them. He might then have taken the ground, that the delivery was a condition precedent; or he might have offered to deposit the money in court on those papers being delivered to him; or he might have put that defence upon the record in the attachment case by a special plea, or in answer to the interrogatories propounded to him. But he did not do so. He must, therefore, be considered as the debtor of *Bryden* on the 17th of July, 1812, according to the terms of his contract.

Being perfectly satisfied of these facts, and that *Samuel Chase* did thus acknowledge and consider himself as the debtor of *Bryden* on that day; it is unnecessary to determine whether this claim of *Bryden's* was or was not such a debt as might have been attached in the hands of *Chase* as his garnishee; since *Chase's* whole course of conduct in the attachment case amounts to a total and absolute waiver of every objection on that ground.(b)

The next question therefore is, whether, according to the nature of the contract between *Bryden* and *Chase* he was chargeable with interest, and from what time? It has been insisted, that *Chase* ought to be charged with interest *from the date of his contract*, and